

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JAYNE FESHOLD,

Plaintiff,

vs.

CLARK COUNTY, a political subdivision, and
municipality including its department
UNIVERSITY MEDICAL CENTER,

Defendant.

Case No.: 2:10-cv-00003-RLH-PAL

ORDER

(Motion for Summary Judgment—#27)

Before the Court is Defendant University Medical Center’s (“UMC”) **Motion for Summary Judgment** (#27, filed Dec. 13, 2010). The Court has also considered Plaintiff Jayne Feshold’s Opposition (#30, filed Jan. 14, 2011), and UMC’s Reply (#33, filed Feb. 7, 2011).

BACKGROUND

This dispute arises out of Feshold’s medical separation from UMC and Feshold’s contention that UMC violated the Americans with Disabilities Act (“ADA”) by failing to accommodate her disability. Feshold began working for UMC in 1999 as an analyst in the medical records department. In May 2007, UMC relocated Feshold’s department and assigned her to work in a cubicle. At the time of this move, Feshold’s supervisor, Shelly Beck, allowed her to work

1 outside of her cubicle in a more open space where “assemblers” worked. In July, Rebecca
2 Ricksecker took over Beck’s position and required Feshold to work in her assigned cubicle.

3 After Feshold relocated to her cubicle, she began to make repeated complaints
4 about her working condition, mostly involving heat or noise. She also visited the emergency room
5 complaining of heat exhaustion. Soon thereafter, Feshold sought leave time under the Family
6 Medical Leave Act (“FMLA”) due to post traumatic stress disorder with features of anxiety
7 according to her doctor, Dr. Kochy Tang. While on leave, Feshold continued to send emails to her
8 supervisor asking about the heat and noise issues that she had experienced in her cubicle to see if
9 anything was being done about the issue.

10 In October, Feshold returned to work with a note from Dr. Tang stating that she
11 could return with no work restrictions. (Dkt. #27, Mot. Ex. A-4, Tang Letter dated Oct. 4, 2007.)
12 Later Dr. Tang provided another note requesting a more open work area. (*Id.*, Ex. A-5, Tang
13 Letter dated Oct. 26, 2007.) UMC then approved Feshold for what it terms “light duty.” Under
14 UMC’s light duty policy, an employee has 90 days in which UMC will attempt to accommodate
15 problems after which the employee must return to work with a full duty release or face medical
16 separation. (*Id.*, Ex. A-7, Leah Conedy Dep. 43:9–44:16.) Feshold’s light duty period ended
17 without her providing a full duty release. However, Feshold returned with another medical note,
18 this time requesting relief under the ADA because she suffered from claustrophobia. (*Id.*, Ex. A-
19 12, Letter dated Feb. 7, 2008.)

20 After receiving this last medical note, Anthony Tyler of the Clark County Office of
21 Diversity, which reviews ADA accommodation requests for UMC, (*see id.*, Ex. A-9, Tyler Dep.
22 6:19–7:9), began to communicate with Feshold about UMC’s process for determining whether it
23 was legally required to accommodate her. Tyler interviewed her and later informed Feshold of
24 UMC’s determination that she was not a qualified person under the ADA. Soon thereafter, UMC
25 medically separated from Feshold.

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1 After being fired (medically separated), Feshold filed a charge with the Equal
 2 Employment Opportunity Commission, which issued her a right to sue letter on October 7, 2009.
 3 Feshold then filed suit on January 4, 2010, alleging claims for: (1) discrimination and failure to
 4 accommodate under the ADA, (2) retaliation in violation of the FMLA, and (3) wrongful discharge
 5 under state law. On November 19, the parties stipulated to dismiss the second and third causes of
 6 action. Now before the Court is UMC's motion seeking summary judgment on the remaining
 7 ADA claim. For the reasons discussed below, the Court denies the motion.

8 DISCUSSION

9 I. Legal Standard

10 The purpose of summary judgment is to avoid unnecessary trials when there is no
 11 dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d
 12 1468, 1471 (9th Cir.1994). Summary judgment is appropriate when the pleadings, the discovery
 13 and disclosure materials on file, and any affidavits "show there is no genuine issue as to any
 14 material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v.*
 15 *Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine" if there is a sufficient evidentiary basis
 16 on which a reasonable fact-finder could find for the nonmoving party and a dispute is "material" if
 17 it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*,
 18 477 U.S. 242, 248–49 (1986). Where reasonable minds could differ on the material facts at issue,
 19 however, summary judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441
 20 (9th Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996). "The amount of evidence necessary to raise a
 21 genuine issue of material fact is enough 'to require a jury or judge to resolve the parties' differing
 22 versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983)
 23 (quoting *First Nat'l Bank v. Cities Service Co.*, 391 U.S. 253, 288–89 (1968)). In evaluating a
 24 summary judgment motion, a court views all facts and draws all inferences in the light most
 25 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d
 26 1100, 1103 (9th Cir. 1986).

1 The moving party bears the burden of showing that there are no genuine issues of
 2 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In order to carry
 3 its burden of production, the moving party must either produce evidence negating an essential
 4 element of the nonmoving party’s claim or defense or show that the nonmoving party does not
 5 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.”
 6 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the
 7 moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting the motion to
 8 “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256.
 9 The nonmoving party “may not rely on denials in the pleadings but must produce specific
 10 evidence, through affidavits or admissible discovery material, to show that the dispute exists,”
 11 *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply
 12 show that there is some metaphysical doubt as to the material facts.” *Bank of America v. Orr*, 285
 13 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere existence of a scintilla of
 14 evidence in support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

15 **II. Analysis**

16 The Court will first address the question of whether Feshold is a qualified
 17 individual under the ADA, 42 U.S.C. § 12101, *et seq.* The Court will then address, as a qualified
 18 individual or not, the question of whether UMC discriminated against her in firing her. UMC does
 19 not dispute that it is an employer subject to the ADA or that Feshold suffers from a mental
 20 impairment and, therefore, the Court need not address those issues.

21 **A. Qualified Individual**

22 The ADA classifies an employee as disabled if she has a physical or mental
 23 impairment which substantially limits one or more major life activities. *See* 42 U.S.C. §
 24 12102(2)(A). A plaintiff must satisfy three elements to qualify as a disabled person for purposes
 25 of the ADA: (1) she must have a physical or mental impairment; (2) the impairment must limit one
 26 or more major life activities; and (3) the limitation must be substantial. *Toyota Motor Mfg., Ky.*,

1 *Inc. v. Williams*, 534 U.S. 184, 194-95 (2002) (superseded by statute).¹ The fact that a plaintiff
 2 suffers from a particular named condition is not sufficient in itself to render her eligible for relief
 3 under the ADA. *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 566 (1999). It is the effect of the
 4 condition on that person's life that matters and that determination must be made on a case by case
 5 basis. *Id.*

6 UMC contends that “Feshold’s condition does not rise to the level of a qualifying
 7 disability within the meaning of the ADA as the condition does not substantially limit any one or
 8 more major life activities with respect to home or work” and that therefore she is not a qualified
 9 individual. (Dkt. #27, Mot., 8:22–24.) UMC correctly argues that merely “having an impairment
 10 does not make one disabled for purposes of the ADA. Claimants also need to demonstrate that the
 11 impairment limits a major life activity.” *Williams*, 534 U.S. at 195. However, the Court finds that
 12 there is sufficient evidence that Feshold’s claustrophobia substantially impacted various major life
 13 activities (concentrating, speaking, performing manual tasks, etc.) while in enclosed environments
 14 such as her cubicle for a reasonable juror to find in her favor. UMC’s arguments regarding Dr.
 15 Tang’s diagnosis and testimony may go to his credibility at trial, but are insufficient to obtain
 16 summary judgment. Accordingly, the Court denies summary judgment on this issue as these
 17 questions are properly decided by a jury.

18 **B. Disability Discrimination**

19 Under the ADA it is unlawful for a covered employer to “discriminate against a
 20 qualified individual with a disability because of the disability of such individual in regard to job
 21 application procedures, the hiring, advancement, or discharge of employees, employee
 22 compensation, job training, and other terms, conditions, and privileges of employment.” 42

24 ¹ While the ADA Amendments Act of 2008 supersedes *Williams*, see *Nyrop v. Indep. School Dist. No.*
 25 *11*, 616 F.3d 728, 734 n.4 (8th Cir. 2010), *Williams* still applies to this case as the superseding statute does not
 26 apply retroactively and the decisions relevant to this case were made prior to the effective date of the superseding
 statute, *Becerril v. Pima Cnty. Assessor’s Office*, 587 F.3d 1162, 1164 (9th Cir. 2009). Both parties acknowledge
 that *Williams* governs this case.

1 U.S.C. § 12112(a); *see also Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1229 (9th Cir. 2003).
 2 A plaintiff may qualify for relief under the ADA if she can show that: “(1) she is a disabled person
 3 within the meaning of the statute; (2) she is qualified, with or without reasonable accommodation,
 4 to perform the essential functions of the job she holds or seeks; and (3) that she suffered an
 5 adverse employment action because of her disability.” *Braunling v. Countrywide Home Loans*
 6 *Inc.*, 220 F.3d 1154, 1156 (9th Cir. 2000).

7 UMC argues that there is no evidence that Feshold was separated from UMC
 8 “because of” a disability as is required for a claim of disability discrimination. *Kaplan*, 323 F.3d
 9 at 1229 (9th Cir. 2009). The Court, again, disagrees. Feshold’s claim survives summary judgment
 10 because she has provided sufficient evidence to suggest that she was fired because of her
 11 disability. Feshold provides evidence showing that she was disabled within the meaning of the
 12 ADA, as noted above, and that this limited her ability to do her job without a reasonable
 13 accommodation. She also provides evidence demonstrating that when she was reasonably
 14 accommodated, as she was under her prior supervisor, she was able to do her job satisfactorily.
 15 Most importantly, Feshold provides evidence showing that UMC fired her because she could not
 16 return to work with a full duty release as they required her to do. This goes to the heart of her
 17 disability claim: she was fired because she could not perform adequately due to her disability.
 18 Therefore, the Court finds that summary judgment is inappropriate on this issue as reasonable
 19 jurors could find for Feshold. Accordingly, the Court denies summary judgment on Feshold’s
 20 claim for discrimination and failure to accommodate under the ADA.

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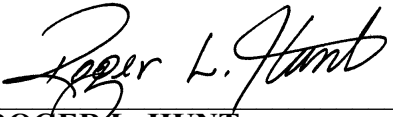
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CONCLUSION

Accordingly, and for good cause appearing,
IT IS HEREBY ORDERED that UMC's Motion for Summary Judgment (#27) is
DENIED.

Dated: May 24, 2011.



ROGER L. HUNT
Chief United States District Judge